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1945. K File No. D. Tenancy/45

Legal DEPARTMENT
A BRANCH

Subject:— Opinions under the
Bombay Tenancy Act, 1939.

(177 B/E)

File No. D. Tenancy/45

Std. Sect. Sup 24 B c.

477-A.

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Legal Department File No. O. Tenancy /45.

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		Bom. Tenancy Act, 1939.	
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MM

SC dated 29-8-1945.

sub 5/6

5/6.

L.D.-R.T.No. 7290 dated
25/27-8. 1945.

Submitted.

slip F in
R.D file No.
1118/24 (Prov't.)

It appears that two protected Dhil tenants Chooma Narsi and Mangalia Bhavsa of the Jamadari village of Therka, Dhoco/ and Panch Mahals District, failed to pay rent to the superior holder within the prescribed time in the revenue year 1941-42. The superior holder did not object to the tenants cultivating the lands in the next year i.e. 1942-43. On 24.8.1942 the landlord however applied to the Mahalkari for eviction of the tenants under section 24 of the Bombay Tenancy Act, 1939 for their failure to pay rent for the year 1941-42. On 15.9.1942 the Mahalkari ordered possession of the land along with the standing crops, to be given to the superior holder. The tenants duly paid off the arrears of rent on 17th September 1942 but the possession of the land, with the standing crops, was given to the superior holder on 25th October 1942. On a representation by Mr. Indulal Yagnik, President, All India Kisan Sabha, on behalf of the two Dhil tenants, Govt. cancelled the order of the Mahalkari dated 15.9.1942 orderingtheir eviction and also directed that possession of the lands in question should be restored to them. The tenants were also advised through Mr. Yagnik to present an application under sec. 13 of the Bombay Tenancy Act, 1939 to the Mahalkari for compensation. The tenants accordingly presented the applications to the Mahalkari The landlord has thereupon contended that:-

(i) the tenants cannot claim compensation under section 13 of the Act and

(ii) that the Aval Kamdar (to whom the case was transferred) has no jurisdiction to try the case

on the ground that sec. 13 is applicable to those cases only where the landlord has taken the possession of lands for non-bona fide purposes or where the tenant has made substantial

improvements to the lands before the landlord has given a notice for termination of tenancy under section 7. The Collector seems to agree with the landlord's contention that the present case is not covered by the provisions of sec. 13. The Comsr. is however of the opinion that the case would be covered by sec. 13 for improvement and consequently compensation can be awarded to the tenants under sec. 8 read with sec. 13 of the Act. U.S.R.D has stated in his note at p. 6 ante that with reference to sections 8(2) and 2(20) it seems that "improvements" would mean improvements of a permanent or semi-permanent character and would not include improvements made by ploughing and sowing the land, that the application under sec. 13 would not therefor be sustainable and that the only remedy open to the tenants would be to go to Court. Secy. R.D. seems to agree with U.S.R.D's view. The R.L.A. is requested to advise.

pp.1-2 ante

pp.2-3 ante

MM

SC dated 29-8-'56.

Office of the R.L.A.

Seen and returned .

2. The view taken by U.S.,R.D., in his note at page 5 ante is correct.

2/15/45.

Remembrancer of Legal Affairs.

U.R.to R.D., No. 7260 , dated 3-10-1945.

A.A.S.R. (after issue).

A P A (before issue) 8/10.

SC dated20-8-'45.

SMA 5/6

DHS 5/6